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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,891	03/08/2004	Ryan Cameron Lakin	14977-0006	1521
25267 7590 12/24/2008 BOSE MCKINNEY & EVANS LLP 111 MONUMENT CIRCLE, SUITE 2700 INDIANAPOLIS, IN 46204			EXAMINER HOFFMAN, MARY C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 12/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/795,891

Applicant(s)

LAKIN ET AL.

Examiner

MARY HOFFMAN

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 16-34, 36-42 and 60-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 16-34, 36-42 and 60-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/02/2008 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 16-34, 36-42 and 60-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duvillier et al. (U.S. Patent No. 5,749,876)

Duvillier et al. disclose a system (see, e.g. FIG. 2, 3) for cutting a bone at a desired location, a cutting block having a frame, a first guide adjustably connected to the frame, a first adjustor connected to the frame, and a first mounting location defined by the frame and configured to attach to the bone at the target location, the first guide defining a first cutting path having a position, the position of the first cutting path relative

to the first mounting location being adjustable using a grip of the first adjustor. The cutting block frame includes a plurality of channels configured to support the first guide and accommodate movement of the first guide during adjustment of the first cutting path. The first guide (ref. #21) includes a pair of substantially parallel guide walls extending between a pair of end portions, the guide walls and the end portions defining the first cutting path. The first mounting location includes a bore defined by the frame. The frame defines a second mounting location, the first mounting location and the second mounting location being located on an attachment wall of the frame. The frame further includes a mounting plate coupled to the frame to accommodate linear adjustment of the position of the first cutting path. The mounting plate is further configured to accommodate angular adjustment of the first cutting path. The mounting plate includes an arcuate channel for supporting a post connected to the first guide, the arcuate channel defining a path of angular adjustment of the first cutting path.

The cutting block further includes a second guide (ref. #24) defining a second cutting path having a position, the position of the second cutting path relative to the first mounting location being adjustable. The position of the second cutting path relative to the first mounting location is adjustable using a second grip of the first adjustor. Use of the second grip causes linear adjustment of the position of the second cutting path. The cutting block further includes a second adjustor having a grip, use of the second adjustor grip causing angular adjustment of the position of the second cutting path. The position of the second cutting path relative to the first mounting location is adjustable using a grip of a second adjustor. The frame includes a first end wall, a second end

wall, a first sidewall extending between the end walls, and a second sidewall extending between the end walls. The first guide is connected between the sidewalls adjacent the first end wall. The cutting block further includes a second guide defining a second cutting path, the second guide being adjustably connected to the frame between the sidewalls.

The cutting block further includes a third guide (ref. #30) defining a third cutting path, the third guide being adjustably connected to the frame between the sidewalls. The third guide adjustably is connected to the frame, the third guide disposed adjacent to the second guide and independent thereof, and a third adjustor is connected to the frame, the third guide defining a third cutting path having a position, the position of the third cutting path being adjustable using a grip of the third adjustor, being independently adjustable with the first cutting path and the second cutting path, angularly adjustable with respect to the second cutting path, and angularly adjustable with respect to the first mounting location.

The cutting block further includes a fourth guide (ref. #34) defining a fourth cutting path, the fourth guide being adjustably connected to the frame between the side walls adjacent the second end wall. The second guide and the third guide are positioned between the first guide and the fourth guide. The second guide is positioned between the first guide and the first mounting location and the third guide is positioned between the fourth guide and the first mounting location. The position of first guide is adjustable linearly relative to the first mounting location using the first adjustor. The cutting block further includes a second adjustor, a third adjustor, and a fourth adjustor,

the first guide and the second guide being adjustable linearly relative to the first mounting location using the first adjustor, the second guide being adjustable angularly relative to the first mounting location using the second adjustor, the third guide and the fourth guide being adjustable linearly relative to the first mounting location using the third adjustor, and the third guide being adjustable angularly relative to the first mounting location using the fourth adjustor.

Duvillier et al. disclose the claimed invention except for a drill cylinder having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and tracking instruments.

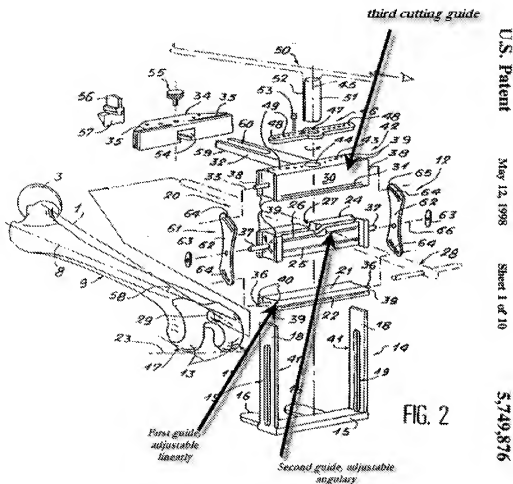
Kienzle, III et al. disclose a drill cylinder (FIG. 1) having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and tracking instruments for accurate positioning of a drill in a body part (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the system of Duvillier et al including a drill cylinder having a handle and a central bore and an array of elements configured to be detected by an image guidance system, a receiver, a processor coupled to the receiver, and tracking instruments in view of Kienzle, III, et al. for accurate positioning of a drill in a body part.

Response to Arguments

Applicant's arguments filed 10/02/2008 have been fully considered but they are not persuasive. Applicant argues that the device of Duvillier et al does not include a third guide that defines a third cutting path having a position, the position of the third cutting path being adjustable using a grip of the third adjustor, being independently adjustable with the first cutting path and the second cutting path, angularly adjustable with respect to the second cutting path, and angularly adjustable with respect to the mounting location.

The examiner respectfully disagrees. As shown below, Duvillier discloses a first guide defining a first cutting path having a position, the position of the first cutting path relative to the first mounting location being adjustable linearly using a grip of the first adjustor and a second guide defining a second cutting path having a position, the position of the second cutting path relative to the first mounting location being adjustable angularly using a grip of the second adjustor (e.g., see the marked up figure below). Duvillier also discloses a third guide (ref. #30) that defines a third cutting path having a position, the position of the third cutting path being adjustable using a grip of the third adjustor, being independently adjustable with the first cutting path and the second cutting path, angularly adjustable with respect to the second cutting path, and angularly adjustable with respect to the mounting location



The rejections are deemed proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARY HOFFMAN whose telephone number is (571)272-5566. The examiner can normally be reached on Monday-Thursday 10:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary C. Hoffman/
Examiner, Art Unit 3733
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733